

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp, (U 901-E) for
Exemption from the Requirements of California
Public Utilities Code Section 851.

Application 02-10-031
(Filed October 23, 2002)

**ASSIGNED COMMISSIONER'S RULING
ESTABLISHING CATEGORY AND PROVIDING
SCOPING MEMO IN COMPLIANCE WITH ARTICLE 2.5,
SB 960 RULES AND PROCEDURES**

Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure,¹ this ruling sets forth the procedural schedule, assigns the principal hearing officer, and addresses the scope of the proceeding. This ruling is appealable only as to category of this proceeding under the procedures in Rule 6.4. In delineating the scope of this proceeding, I have considered the application only, as there were no protests.

Background

PacifiCorp dba Utah Power & Light Company (PacifiCorp) requests an exemption from the California Public Utilities Code Section 851 that governs transfers of utility property. PacifiCorp proposes to sell the water rights and assets associated with the Naches hydroelectric facility (Naches), which is located

¹ All references to Rules are to the Commission's Rules of Practice and Procedure found in Title 20 of the California Code of Regulations.

in the State of Washington, to the United State Bureau of Reclamation (Reclamation). Naches is a 7.8 MW “run of river” facility. The facility only provides on a system basis an average of 3.5 MW, and California represents only 2% of the system load for a 70 kW share. The Federal Energy Regulatory Commission does not license the facility.

If granted, this authority along with other necessary regulatory approvals from the states of Washington, Oregon, Idaho, Utah and Wyoming, would exempt PacifiCorp from compliance with § 851. PacifiCorp proposes that the Commission find § 853(b) applicable to exempt the transaction as “not necessary in the public interest”. By this Scoping Memo and Ruling I decline to do so.

I find, preliminarily, that § 851 does apply and as an integral part of the Commission’s decision-making process it will be necessary for PacifiCorp to demonstrate sufficient evidence to allow the Commission to comply with the California Environmental Quality Act (CEQA) § 21083 and § 21087, Public Resources Code².

The Commission made a preliminary finding in Resolution ALJ 176-3099, issued on November 7, 2002, that the category for this proceeding is ratesetting and determined that the matter did require hearings.

Scoping Memo

The purpose of this proceeding is to determine whether it is in the public interest to find the Naches facilities to be no longer used and useful as defined in

² Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

§ 851. The application as filed is insufficient and I direct PacifiCorp to supplement its application and testimony. PacifiCorp must file:

1. a true and conformed copy of the final decision of the Washington Utilities and Transportation Commission in its Docket No. UE-021118.
2. a complete listing and explanation of the regulatory status in all other applicable state jurisdictions.
3. sufficient testimony or other evidence that enables the Commission to meet the requirements of CEQA § 21083 and § 21087, or evidence that PacifiCorp has otherwise satisfied CEQA.
 - a. Whether Reclamation prepared an adequate environmental document pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, or
 - b. some other analysis that will provide the Commission an adequate basis for reliance in conformance with CEQA.

The issues raised by this application warrant careful consideration and I have scheduled a prehearing conference (PHC) for January 21, 2003.

Need for Hearings and Ex Parte Rules

Until we have reviewed the supplement that is due January 13, 2003, the assigned Administrative Law Judge (ALJ) and I cannot determine whether or not additional testimony or evidentiary hearings are required. Therefore, at this time I will preliminarily rule that hearings are needed, triggering the *ex parte* rules as set forth in Rule 7(c) and Pub. Util. Code § 1701.3(c).³ It is possible that the Commission will have sufficient information to issue a decision without evidentiary hearings following receipt of the supplemental information. In the schedule established below, I set a timeline for making this determination by allowing any party to file and serve a request for evidentiary hearings. The

³ All section references are to the Public Utilities Code unless otherwise indicated.

request must identify the disputed issues of material fact for which the party would present evidence, in the form of prepared testimony.

Categorization and Designation of Principal Hearing Officer

No party disputed the Commission's preliminary categorization of this proceeding, and I affirm the preliminary categorization of ratesetting. In a ratesetting proceeding, Rule 5(k)(2) defines the presiding officer as the principal hearing officer designated as such by the assigned Commissioner prior to the first hearing in the proceeding. I have designated ALJ Douglas Long as the principal hearing officer. The provisions of Pub. Util. Code § 1701.3(a) apply.

Schedule

The following schedule will be adhered to as closely as possible:

Event	Date
Application Filed	Wednesday, October 23, 2002
Assigned Commissioner Scoping Memo Issued	Thursday, January 2, 2003
Supplement Filed and Served	Monday, January 13, 2003
PHC	Tuesday, January 21, 2003
Requests for Evidentiary Hearings Filed and Served	Tuesday, January 21, 2003
Public Participation Hearings	TBA if needed
Testimony Served (if Evidentiary Hearings Requested)	Monday, February 3, 2003
Projected Submission Date (if NO Evidentiary Hearings)	Monday, February 3, 2003
PHC – Scheduling (if Evidentiary Hearings Requested)	Thursday, February 13, 2003 (10 Days after testimony)
Evidentiary Hearings (if Requested)	Tuesday, February 18-19 2003
Concurrent Opening Briefs Filed (if Evidentiary Hearings Requested)	Wednesday, March 5, 2003 (2 weeks after PHC)
Draft Decision (if NO Evidentiary Hearings)	Monday, March 3, 2003
Target for Final Commission Decision (if NO Evidentiary Hearings)	April 2003

Concurrent Reply Briefs Filed (if Evidentiary Hearings Requested)	Wednesday, March 19, 2003 (2 weeks after Opening Briefs)
Proposed Decision (if Evidentiary Hearings Requested)	Wednesday, April 9, 2003
Target for Final Commission Decision (if Evidentiary Hearings Requested)	May 2003

Filing, Service, and Service List

There will be documents that parties will be directed to file and serve in response to rulings, either by myself or the assigned ALJ. These documents must be filed with the Commission's Docket Office. Please note that the Docket Office does NOT appear on the service list. If you are not familiar with the filing requirements, please review the Commission's Rules of Practice and Procedure for all of the filing requirements. These Rules can be found on the Commission's web site at www.cpuc.ca.gov.

Parties should also provide concurrent e-mail service to ALL persons on the service list, including those listed under "Information Only." Any document that is filed must also be served electronically. See *Attachment A* for Electronic Service Protocols. The current service list for this proceeding is *Attachment B* to this ruling. A copy of the service list for this proceeding is also available on the Commission's web page.

Prepared testimony is served on the service list but is not filed with the Docket Office. Therefore, if you choose to submit testimony, you need only follow the electronic service requirements described above, but not the filing requirements.

Therefore, **IT IS RULED** that:

1. The scope of this proceeding is described herein.
2. The schedule of this proceeding is as set forth above in this ruling.

3. This ruling confirms the Commission's preliminary finding in Resolution ALJ 176-3090, issued on November 7, 2002, that the category for this proceeding is ratesetting but determines that hearings are necessary. This ruling, only as to category, is appealable under the procedures in Rule 6.4.

4. The *ex parte* rules as set forth in Rule 7(c) of the Commission's Rules of Practice and Procedure apply to this application.

5. Administrative Law Judge Long is the principal hearing officer.

6. The official service list is attached to this ruling. Parties shall file and serve all documents as set forth in this ruling.

7. A prehearing conference is scheduled for January 21, 2003.

Dated January 2, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

ATTACHMENT A
ELECTRONIC SERVICE PROTOCOLS
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Party Status in Commission Proceedings

These electronic service protocols are applicable to all “appearances.” In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission’s Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission’s Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

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Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

- Merge into a single electronic file the entire document to be served (*e.g.* title page, table of contents, text, attachments, service list).
- Attach the document file to an electronic note.
- In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

Choose "Proceedings" then "Service Lists."

- Scroll through the "Index of Service Lists" to the number for this proceeding.

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- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF ATTACHMENT A)

ATTACHMENT B
Service List

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(END OF ATTACHMENT B)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo in Compliance With Article 2.5, SB 960 Rules and Procedures on all parties of record in this proceeding or their attorneys of record.

Dated January 2, 2003, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.